IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION Nos.18035 of 2004 and 2687 of 2005

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WRIT PETITION No.18035 of 2004:

Between:

Chatakondu Hazarathaiah, S/o. Late Chandraiah, R/o. H.No.7/387, Gopuram Street, Ranganayakula Peta, Nellore, Nellore District.

..... PETITIONER

AND

1 The Joint Collector, Nellore.
2 The Revenue Divisional Officer, Nellore.
3 The Mandal Revenue Officer, Nellore.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, direction or order especially in the nature of writ of Mandamus declaring the action of the first Respondent in issuing *suo motu* orders in Rc.F.197/2003, dated 08-07-2004 is without jurisdiction and violative of principles of natural justice, arbitrary, illegal and offending Article 14, 19(1)(g) and 21 of the Constitution of India and consequently direct the respondents to permit the petitioner to run the F.P.Shop No.14 Nellore town on the basis of the permanent authorization issued by the appointing authority in D.Dis.No.688/2004, dated 14-6-2004.

WRIT PETITION No.2687 of 2005

Between:

Ch.Suresh, S/o.Late Krishnaiah, R/o.H.No.7/188, Yadava Street, Ranganayakula Peta, Nellore, Nellore District.

..... PETITIONER

AND

1 The Joint Collector, Nellore.
2 The Revenue Divisional officer, Nellore.
3 The Mandal Revenue officer, Nellore.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, direction or order especially in the nature of writ of Mandamus declaring the action of the first Respondent in issuing *suo motu* orders in Rc.F.197/2003, dated 08-07-2004 is without jurisdiction and violative of principles of natural justice, arbitrary, illegal and offending Articles 14, 19(1)(g) and 21 of the Constitution of India and consequently direct the Respondents to permit the petitioner to run the F.P.shop No.34 Nellore town on the basis of the permanent authorization issued by the appointing authority in D.Dis.No.667/2004, dated 14-06-2004.

Counsel for the Petitioner: MR.M.Subrahmanyam (in both cases)

Counsel for the Respondents: GP for Civil Supplies (in both cases)

The Court made the following:

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.18035 of 2004 and 2687 of 2005

COMMON ORDER:

This common order shall dispose of both the writ petitions. The brief fact of the matter is that the petitioners were appointed as fair price shop dealers of fair price shop Nos.14 and 34 of Nellore Town by the second respondent in June 2004. They were allowed to distribute essential commodities for the month of July 2004. When they approached the Mandal Revenue Officer for essential commodities to distribute in August 2004, they were denied on the ground that the Joint Collector has stayed appointment of the petitioners. Aggrieved by the orders of the Joint Collector, the present writ petitions are filed. This Court while admitting the writ petitions suspended the proceedings of the Joint Collector. When the interlocutory applications including the application for vacating the interim order came up before this Court, the writ petitions were heard finally and are being disposed of by this common order.

A reading of the impugned order would show the same came to be passed purportingly in obedience to the order of this Court in W.P.No.744 of 2003 dated 16.7.2003 and also acting upon a notice addressed by a lawyer. There is also an allegation made that even before the rationalization of allotment of ration cards is pending, the Revenue Divisional Officer made appointments to various shops including shop Nos.14 and 34 and therefore, the appointments are stayed. It is the submission of the learned Counsel for the petitioners that clause 5A of A.P. State Public Distribution System Control Order, 2001 (hereafter called 'Control Order) has no application and therefore, the order was passed without jurisdiction. Secondly

and alternatively, it is the submission that even where jurisdiction under clause 5A of Control Order is exercised, the dealer is entitled to a notice to make his representation and in the absence of any such notice the impugned order is not sustainable. Lastly, it is urged that this Court in W.P.No.744 of 2003 only directed to consider and dispose of the representation made by the Dealers Welfare Association, Nellore and there was no order staying the appointments of the petitioners.

Learned Assistant Government Pleader does not dispute that this Court in W.P.No.744 of 2003 did not restrain the petitioners herein to continue as fair price shop dealers nor permitted the authority under clause 5A of Control Order to review the orders. What all he submits is that the impugned order came to be passed in obedience of the judgment of this Court in W.P.No.744 of 2003 and therefore it is sustainable.

After perusing the material placed before this Court as well as judgment in W.P.No.744 of 2003 dated 16.7.2003, this Court holds that the Joint Collector issued the impugned orders without proper application of mind and without issuing notice to the petitioners before they were deprived of their authorization especially when they already distributed essential commodities for the month of July 2004. Secondly, this Court never directed the Joint Collector to stop the petitioners from functioning as fair price shop dealers and therefore, reliance placed on the judgment of this Court is misconceived. This Court only directed; it is not denied, to consider and dispose of the representation made by dealers welfare associations and the relief directing the Joint Collector not to fill up the vacancies was not granted by this Court.

Learned Counsel for the petitioners contends that clause 5A of Control Order has no application. In view of the admitted position that the impugned order was not preceded by a notice, the orders are set aside and the question whether under clause 5A the Joint Collector is entitled to review the orders passed by the Revenue Divisional Officer under clause 5(2) of Control Order has to be decided in an appropriate case.

In the result, for the above reasons, the writ petitions are allowed. It shall, however, be open to the Joint Collector, Nellore to dispose of the application made by Dealers Welfare Association as directed by this Court in W.P.No.744 of 2003. There shall be no order as to costs.

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06.07.2005 **(V.V.S.RAO, J)**

YS

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, Acting Chief Justice on this Wednesday, the sixth day of July Two thousand and five.

To

1 The Joint Collector, Nellore.
2 The Revenue Divisional Officer, Nellore.
3 The Mandal Revenue Officer, Nellore.

4 Two CCs to the Government Pleader for Civil Supplies,

High Court Buildings, Hyderabad. (OUT)

5 Two C.D. Copies.